



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 8059-01
21 February 2002

SSG [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Staff Sergeant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 21 February 2002. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by Headquarters Marine Corps dated 4 and 19 December 2001, copies of which are attached. They also considered your rebuttal letter dated 9 January 2002.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion dated 19 December 2001. If you are correct, as you assert in your letter of 9 January 2002, that you were not seen by the Substance Abuse Counseling Office or counseled by your command, and that your command told you they intended to promote you, this would not establish that you warranted promotion. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
MANPOWER AND RESERVE AFFAIRS DEPARTMENT
HARRY LEE HALL, 17 LEJEUNE ROAD
QUANTICO, VIRGINIA 22134-5104

8059-01

IN REPLY REFER TO:

1400/3

MMPR-2

4 Dec 01

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: ADVISORY OPINION IN THE CASE OF STAFF SER [REDACTED]
[REDACTED] USMC

Ref: (a) CO, FinManScol ltr 1430 FMS of 22Jul99
(b) CMC ltr 1450/5 MMRP-2 of 17Sep99
(c) MCO 1400.32C paragraph 1201.4d(1) (ENLPROMMAN)

1. Staff Sergeant [REDACTED] requests that his promotion to gunnery sergeant be effected, with the original date of rank, based on his selection by the 1998 Gunnery Sergeant Selection Board. He feels that since his command did not notify CMC to delay his promotion until after his name appeared on the MARADMIN for Staff Noncommissioned Officer promotions for November, he should have been promoted.
2. Staff Sergeant [REDACTED] was selected to gunnery sergeant by the 1998 Gunnery Sergeant Selection Board and was to be promoted on 1 November 1998. However, he was not promoted on that date because he was pending a civil court date for a DWI. He was found guilty and convicted for DWI on 20 July 1999. Following the conviction, his commanding officer recommended revocation of his promotion to gunnery sergeant per reference (a). On 17 September 1999, the Commandant of the Marine Corps revoked Staff Sergeant [REDACTED]'s name from the 1998 Gunnery Sergeant Selection list due to his failure to maintain the high standards of personal and professional performance expected of a Staff Noncommissioned Officer. Reference (b) applies.
3. Per reference (c) enlisted Marine promotions are not effective until a promotion warrant is delivered at an appropriate ceremony. We recommend the petition be denied.
4. Point of contact is [REDACTED].

[REDACTED]
Deputy Head, Promotion Branch



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

8059-4
IN REPLY REFER TO:

1070

JAM7

19 DEC 2001

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION IN THE
CASE OF STAFF SERGEANT [REDACTED] USMC

Ref: (a) MARADMIN 086/98
(b) MCO P1400.32B (MARCORPROMMAN)
(c) MCO P1400.32C (MARCORPROMMAN)

1. We are asked to provide an opinion on Petitioner's request that his promotion to gunnery sergeant be effected, with the original date of rank based on his selection by the 1998 Gunnery Sergeant Selection Board.

2. We recommend that the requested relief be denied. Our analysis follows.

3. Background

a. On 18 February 1998 Petitioner, an active duty staff sergeant, was arrested by civilian police for Driving Under the Influence (DUI). On 27 February 1998, the 1998 Gunnery Sergeant Selection Board message was released indicating Petitioner's eligibility for consideration for selection and promotion to the rank of gunnery sergeant. On 18 June 1998, a message announcing the Board's selections for promotion to gunnery sergeant was released indicating that Petitioner had been selected for promotion. On 16 October 1998, reference (a), the MARADMIN announcing the planned Staff Noncommissioned Officers promotions for 1 November 1998 was released. Reference (a) authorized the promotion of specific Staff Noncommissioned Officers, including Petitioner, by local commanders in accordance with reference (b).

b. On 27 October 1998, the Commanding Officer, Marine Corps Service Support Schools, notified CMC of her intent to withhold Petitioner's promotion to gunnery sergeant pending the outcome of the civilian court trial for DUI. The Commandant of the Marine Corps (CMC) replied directing Petitioner's commanding officer to submit the required report and recommendations concerning Petitioner's arrest by 27 November 1998. Petitioner's commanding officer responded to CMC on 18 November 1998 setting forth the details of the arrest and recommended that Petitioner's promotion be withheld until adjudication of the pending DUI charges in civilian court. On 5 February 1999, CMC announced his intent to hold Petitioner's certificate of appointment to gunnery sergeant in abeyance for 3 months.

c. On 20 July 1999, Petitioner was found guilty of Driving While Intoxicated (DWI) by the civilian court. That same month,

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION IN THE CASE OF STAFF SERGEANT [REDACTED] USMC

Petitioner's command recommended that CMC revoke his appointment to gunnery sergeant. Subsequently, on 17 September 1999, CMC deleted Petitioner's name from the 1998 Gunnery Sergeant selection list.

4. Law

a. Paragraph 1201.4(b)(1) of reference (b), states that the certificate of appointment will not be delivered if the Marine concerned has failed to maintain the high standards of professional and personal performance which led to selection (e.g., NJP, DWI/DUI, court-martial, civilian conviction, etc.) or if, in the opinion of the commander, the Marine will not perform creditably in the higher grade (warrant will be returned to CMC (MMPR-2). In cases where the promotion is not effected (ceremony not held, warrant not delivered) on the date of promotion, and the Marine becomes the subject of disciplinary or substandard performance action, the warrant may not be delivered at the commander's discretion. If the commander decides not to deliver the warrant, he or she must immediately report the circumstances to the CMC (MMPR-2) via naval message requesting disposition.

b. Paragraph 1204.3(1) of reference (b) further provides that a Marine will not be promoted while within 12 months of date convicted by civil authorities (foreign or domestic), or action taken which is tantamount to a finding of guilty, for an offence in either situation for which the maximum penalty under the UCMJ is confinement for 6 months or more or which involves moral turpitude.

5. Analysis. Petitioner's request for a promotion to the grade of gunnery sergeant is without merit.

a. Petitioner's record adequately and appropriately memorializes the fact that he failed to maintain the high standards of personal and professional performance expected of a Staff Noncommissioned Officer.

b. Petitioner contends that he should be promoted to gunnery sergeant, despite the fact that he failed to maintain the high standards of personal and professional performance expected of a staff noncommissioned officer because (1) his command did not notify CMC of Petitioner's pending civil action within 10 days of receipt of the selection list,¹ (2) his name appeared on the November 1998 SNCO promotion list, and (3) he was led to believe that he was going to get promoted. All three arguments are without merit.

¹ Petitioner's CO was actually required to report his intent to withhold Petitioner's promotion warrant immediately. Petitioner mistakenly relies on reference (c), a subsequent version of reference (b), not in effect at the time Petitioner's CO intended to withhold Petitioner's warrant.

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION IN THE
CASE OF STAFF SERGEANT [REDACTED] USMC

c. Petitioner's CO's failure to comply with the notification requirements of reference (b) regarding intent to withhold Petitioner's appointment to gunnery sergeant is regrettable. It is, however, irrelevant to CMC's decision whether to promote Petitioner. CMC's paramount concern in this circumstance is not Petitioner's disappointment, but rather it is to ensure that those SNCO's selected for promotion to gunnery sergeant, and who fail to maintain high the high standards of professional and personal performance of a staff noncommissioned officer, and whose promotion has not been effected, are not promoted.

d. That Petitioner's name appeared on the 1998 November list of planned SNCO promotions, again due to Petitioner's CO's failing to comply with the notification requirements of reference (b), is also regrettable. Again, however, this delay in compliance does not in any way overcome CMC's responsibility to ensure that Marines who fail to maintain the high standards of personal and professional performance of a staff noncommissioned officer are not promoted.

e. CMC is not obligated to promote Petitioner even though Petitioner had been previously notified that he was eligible for, and selected to be, promoted. Enlisted Marine promotions are not effective until a promotion warrant is delivered at an appropriate ceremony by a commander authorized to promote the Marine. A warrant for promotion to the grade of gunnery sergeant was never delivered to petitioner.

f. Finally, Petitioner does not assert any other procedural or substantive error on the part of the Marine Corps that would warrant the immediate retroactive promotion.

5. Conclusion. Accordingly, we recommend that Petitioner's request for relief be denied.

[REDACTED]

Head, Military Law Branch
Judge Advocate Division